IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.29253 of 2003

G.Ravichandran .. Petitioner

vs.

1. The Deputy Inspector General of Police,
   Technical Services,
   Police Telecommunications, Chennai-4.

2. The Superintendent of Police,
   Thiruvannamalai District,
   Thiruvannamalai.

3. The Inspector of Police,
   Telecommunication Branch,
   Thiruvannamalai.

4. The Registrar,
   Tamil Nadu State Administrative Tribunal,
   Chennai-4. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records relating to the order of the fourth respondent dated 12.8.2003 in O.A.No.2364 of 2003 confirming the order of the first respondent dated 16.6.2003 in RC.No.A2/321/8801/2003 D.O.No.441/03 and quash the same and direct the respondents 1 to 3 to retain the petitioner in the telecommunication wing with all attendant benefits.

For petitioner : Mr.AR.L.Sundaresan
For respondents: Mr.S.Gomathy Nayagam, Spl.G.P. for RR-1 to 3

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ORDER

(The Order of the Court was made by R.Sudhakar,J.)

The petitioner is challenging the order of the fourth respondent-Tribunal dismissing the petitioner's application. Along with the petitioner/applicant, the case of three other applicants, was heard and disposed of by a common order dated 12.8.2003. The present writ petitioner is applicant in O.A.No.2364 of 2003.

2. It is the case of the petitioner that he joined the Police Department as Police Constable in the year 1986 in the District Armed Reserve at Vellore District. The petitioner opted to join the telecommunication wing in the Police Department and gave his option in the year 1985, relinquishing his services in the general line. While serving in the telecommunication wing, the petitioner got two promotions as Grade-I Police Constable in the year 1995 and Head Constable in the year 1999. According to the petitioner, a separate seniority list is maintained by the telecommunication wing of the Police Department. It is stated in the affidavit filed in support of the writ petition that during the year 1997, the petitioner, on permission of the Department, formed a Society for the benefit of the policemen in Thiruvannamalai District and he was elected as President of the said Society and served as President of the Society from 27.2.1997 to June 2001. One person, by name, Ravi who was serving as Secretary from 1997 had committed misappropriation of funds, for which an enquiry was conducted and the person concerned was directed to remit the amount. According to the petitioner, he had nothing to do with the said misappropriation as he was not connected with the day-to-day affairs and transactions of the Society.

3. On 16.6.2003, the Deputy Inspector General of Police (Technical Services), Police Telecommunication passed D.O.441/03, a repatriation order, wherein, the petitioner had been repatriated to his parent District, Vellore and the same reads as follows:

> "In pursuance of the references cited above, HC 445/PTB (3465/VLR) Thiru G.Ravichandran of Police Telecommunication Branch, Tiruvannamalai is repatriated to his parent District, Vellore with immediate effect on administrative grounds. He will not be taken back in Police Telecommunication Branch under any circumstances and the seniority/promotion earned by him in Police Telecommunication Branch will have no bearing in his Parent District.
>
> 2. The Inspector of Police, Police Telecommunication Branch, Tiruvannamalai is hereby instructed to relieve the above Head Constable at once with instructions to report before the Superintendent of Police, Vellore.

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3. The Superintendent of Police, Vellore is requested to report the date of joining of the above Head Constable in his parent district to this office for taking further action. He is also requested to refix his pay and seniority on par with his batchmates."

Aggrieved by the said order of repatriation, the said O.A.No.2364 of 2003 was filed and the impugned order came to be passed.

4. The contention of the learned counsel for the petitioner is that the order of repatriation affects the seniority of the petitioner and promotion earned in the Telecommunication Department and therefore, it is in the nature of a punishment and it has been made without a notice of enquiry and therefore, there was violation of principles of natural justice. It is also contended that no reason has been stated for repatriation except stating that it was on administrative grounds. The case of the petitioner is that the Tribunal has disposed of the application of the petitioner in a random manner without considering each case individually. Further, the Tribunal failed to see that the seniority list is not common in the Telecommunication Department and the parent Department and therefore, the petitioner's seniority will be affected and the benefit accrued to him while serving in the Telecommunication Department will be lost due to the order of repatriation.

5. Learned counsel for the petitioner relied on Proviso to Rule 9 of the General Rules, which reads as follows:

"9. Members absent from duty -

the absence of a member of a service from duty in such service, whether on leave or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn.

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;

(b) for promotion from a lower to higher category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall

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be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have enjoyed but for his absence subject to his completing satisfactorily the period of probation on his return.

(d) for appointment to any substantive or officiating vacancy in another service, if according to the rules governing appointment to such other service--

(i)he is entitled to such appointment; an
(ii)the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof.

*(Provided that a member of a service who has been appointed to another service outside his regular line shall not be permitted to hold membership in the second service beyond five years, if he is to be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line eventhough he is otherwise qualified under the rules for such promotion or appointment, unless he puts in a fresh service for a minimum period of one year in his post in the former service on reversion from the second service.)"

and contended that since the petitioner has been working in the Telecommunication Wing of the Police Department for more than five years, he should be considered as absorbed in the said Telecommunication Department and therefore, he cannot be repatriated to the parent Department.

6. The Tribunal, while considering the claim of the petitioner and other applicants, in paragraphs 12 and 13, held as follows:

"12. ...

The applicant would now try to make it appear as if that they have given up their seniority in their parent department and now they have to go and join Police Constable Grade-II. This is against the facts. They are maintaining their lien in the parent department viz. Armed Reserve or Special Police Battalion. They only opted to go on deputation to technical branch. But that does not mean that they have given up their seniority in the parent department. In fact in one of the order of repatriation passed by the D.I.G. of Police, Telecommunication Branch, it has been clearly stated

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that the applicant being sent back to parent department will be placed in accordance with seniority above his juniors in the parent department.

13. It is true that while on deputation they were not granted paper promotion in the parent department. But this does not mean that the applicant will go and join as constables only in the parent department. Now that they are being repatriated and sent back to parent department, they will get their original seniority which they have not lost because of the deputation and they will get also promotions that has been given to their juniors in the meantime."

7. However, the Tribunal in paragraph 14 of the impugned order, rejected the claim of the petitioner that the seniority that he gained in the foreign Department should be maintained in the parent Department. The Tribunal further held that " ... If their juniors have been promoted as Police Constable Grade-I or Head Constable, the applicants also will get their due promotion after they joined in the parent department. ... ". It was further observed by the Tribunal that, " ..... notwithstanding that they have not been given paper promotion in the parent department, they will go and take their rank on par with their immediate juniors after repatriation. ...." . In this regard, the Tribunal placed reliance on the proceedings of the Deputy Inspector General of Police, Telecommunication Branch, where it has been clearly stated that on repatriation, the petitioner will take his rank on par with his immediate juniors.

8. Insofar as the challenge to the order of repatriation is concerned, the Tribunal clearly held that the Government servant who has been sent on deputation to a foreign department cannot insist that he should be allowed to work in the foreign department indefinitely and as a matter of right, since the telecommunication department is a separately constituted wing of the Police Department and the persons like the petitioner being sent on deputation, will be repatriated from time to time. The petitioner cannot claim the same as a matter of right. In paragraph 16, the Tribunal held as follows:

"16. Therefore borrowing department has got every right to send back these persons whose services they have borrowed and since they have not been absorbed in the borrowing department, they are not obliged to keep them for ever. The applicants are not in any way affected by the transfer or repatriation and therefore they cannot challenge the same. The orders of repatriation or transfer has been made only in accordance with rules and since it has not adversely affected the rights of these applicants, they have no

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right to question the same. It is only an administrative order strictly in accordance with rules. The applicants who are repatriated back to parent department are to take their ranks and status in accordance with their original seniority."

9. At the time of final disposal of the writ petition, learned counsel for the petitioner submitted additional typed set of papers and referred to a letter termed as "endorsement" dated 20.9.2004 passed by the Superintendent of Police, Vellore District, which was in response to a petition. Paragraph 4 of the said letter dated 20.9.2004 states as follows:

"4. As per Chief Office instructions the names of Police Constables who are received on transfer from other District/Units will be added below the names of those who had been recruited in the district in the same year. Hence PC 3465 Ravichandran has been placed in the place I his batchmate PC and he has been posted to Police Control Room."

10. According to learned counsel for the petitioner, the grievance of the petitioner is that in spite of a specific direction by the Tribunal, the petitioner is placed below the batchmate Police Constables and therefore, even the seniority has not been granted.

11. Heard Shri.S.Gomathy Nayagam, learned Spl.G.P. for the respondents 1 to 3 and he would reiterate the findings of the Tribunal and relying upon paragraphs 4 and 9 of the counter affidavit filed, stated that the petitioner cannot make a claim to continue in the deputation post as a matter of right. In paragraph 4 of the counter affidavit, it is stated as follows:

"... it submitted that it is true that he entered into service as PC.GR.II in the District AR. Vellore on 1.3.1986. As per his willingness the applicant joined in PTB on 16.3.1989. As the PTB is governed by Ad-hoc Rules as per G.O.Ms.No.329A, Home, Dt.25/1/50 and as the PTB is only a borrowing unit the question relinquishing his services in the general line does not arise. ..."

In paragraph 9 of the counter affidavit, it is stated as follows:

"9. .... The repatriation to his parent district cannot be considered as a punishment. Applicant can earn his promotion on par with his immediate junior in parent district according to his seniority maintained in parent district. According to adhoc rules, the

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applicant can be repatriated to his parent district at any time, if any adverse reports received. In this case the applicant had involved in a serious misappropriation case in TVM district. If the applicant is allowed to continue in TVM district further, the case could not be properly investigated. Hence, the applicant was repatriated to his parent district i.e. Vellore correctly. It is submitted that as per adhoc rules framed exclusively for PTB, any adverse notice received, he can be repatriated to his parent unit at any time. ... "

Learned Spl.G.P. submitted that the reasons given in the impugned order of the Tribunal are perfectly valid in law and calls for no interference.

12. We have gone through the order of the Tribunal and the reasons recorded as set out above. The petitioner has not brought to our attention any provision of the rules relating to service condition to state that the petitioner can be allowed to continue for any length of time. On the contrary, Rule 9 relied upon by the learned counsel for petitioner prescribes a period of five years for deputationist as the outer limit, if he is to be considered for promotion etc. in his regular line. The petitioner cannot therefore, as a matter of right, claim that he should not be repatriated and he should be allowed to continue in the deputation post which is contrary to G.O.329-A, Home Department, dated 25.1.1950, also referred to by the Tribunal. We find the reasoning given in the impugned order is just and proper and there is no infirmity. In the case reported in 2001 (4) S.L.R. 447 (P.Krishna Reddy vs. Director (A.P.), a Division Bench of the Andhra Pradesh High Court, following the decision of the Supreme Court reported in AIR 1976 SC 1104 (State of Mysore vs. H.Srinivasamurthy), has held that the deputationist cannot have any legal right to continue on deputation unless he was absorbed. It was further held that the parent department has a right to recall the services of the deputationist. The reasoning given by the Tribunal in paragraph 16 of the impugned order does not call for any interference in the facts and circumstances of the case. We find no merit in the challenge to the order of repatriation, as confirmed by the fourth respondent-Tribunal.

13. The only other contention made by learned counsel for the petitioner is that the communication dated 20.9.2004 consequent to the petitioner's representation which according to him is opposed to the directions given in the order of the Tribunal and that the petitioner's seniority in the parent department is likely to be affected.

14. Learned Spl.G.P. invited our attention to paragraph 10 of the counter affidavit, "Even upgraded promotion as Gr.I P.C., after completion of 10 years and upgraded promotion as HCs. on completion of 5 years as Gr.II PC are given here on the basis of the orders received from the parent districts and monetary benefits are sanctioned to them" "the

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applicant's seniority is still maintained in parent district. The applicant will be given due seniority and he may get promotion on par with immediate junior in his batch mates in the parent district." Hence, the petitioner cannot have any grievance on this score.

15. The claim of the petitioner that he should be taken back to the foreign department from the parent department is not accepted. However, the seniority of the petitioner in the parent department has to be counted from the date of original appointment and promotion must be given as indicated in the counter affidavit filed before this Court.

16. Accordingly, the writ petition is disposed of. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Deputy Inspector General of Police,
   Technical Services,
   Police Telecommunications, Chennai-4.

2. The Superintendent of Police,
   Thiruvannamalai District, Thiruvannamalai.

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